

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Service Rules for the 698-746,)	WT Docket No. 06-150
747-762, and 777-792 MHz Bands)	
)	
Implementing a Nationwide, Broadband,)	
Interoperable Public Safety Network in the)	PS Docket No. 06-229
700 MHz Band)	
)	
Implementation of the Commercial Spectrum)	
Enhancement Act and Modernization of the)	WT Docket No. 05-211
Commission's Competitive Bidding Rules and)	
Procedures)	
)	
Development of Operational, Technical, and)	
Spectrum Requirements for Meeting Federal,)	WT Docket No. 96-86
State and Local Public Safety Communications)	
Requirements Through 2010)	
_____)	

***EX PARTE* REPLY COMMENTS OF**
THE *AD HOC* PUBLIC INTEREST SPECTRUM COALITION

ACORN ACTIVE MEDIA
THE CHAMPAIGN URBANA
WIRELESS INTERNET NETWORK
CONSUMER FEDERATION OF AMERICA
CONSUMERS UNION
EDUCAUSE
FREE PRESS
MEDIA ACCESS PROJECT
NATIONAL HISPANIC MEDIA COALITION
NEW AMERICA FOUNDATION
PUBLIC KNOWLEDGE
U.S. PUBLIC INTEREST RESEARCH GROUP

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THE *AD HOC* PUBLIC INTEREST SPECTRUM COALITION**

Media Access Project, on behalf of the *Ad Hoc* Public Interest Spectrum Coalition (PISC),¹ files these written *Ex Parte* Reply Comments in the above-captioned proceeding.

Despite having filed thousands of pages into the record, PISC's opponents have provided little substantive argument or rebuttal to PISC's proposals to require open access for 30 MHz of spectrum, encourage new entry, and adopt anonymous bidding. Rather, the bulk of the comments directed against the PISC proposals come from the existing licensees, licensee trade associations, and equipment manufacturers and amount to little more than hymns of praise for

¹The current membership of PISC is (alphabetically): Acorn Active Media, the Champaign Urbana Wireless Internet Network (CUWIN), Consumer Federation of America, Consumers Union, EDUCAUSE, Free Press, Media Access Project, National Hispanic Media Coalition, New America Foundation, Public Knowledge, and U.S. Public Interest Research Group.

the *status quo*. By contrast, the customers of these licensees who have commented – the more than 250,000 individuals, the wireless industry innovators, and technology companies – have overwhelmingly supported proposals to make spectrum more accessible and to put licenses into the hands of new entrants.

Critically, those opposed to the open access conditions proposed by PISC have failed to rebut the CTC Engineering report PISC has submitted. Rather than submitting engineering data of their own, opponents have instead either sought to dismiss open access as unnecessary or have provided unsupported horror stories that implementation would prove difficult. The absence of engineering studies to rebut the CTC study, however, belies the argument that obstacles to implementation would frustrate open access as a technical matter. Incumbents' arguments that implementation would be "complicated," however, highlight the difficulties of implementation if incumbent licensees seeking to prevent the emergence of a genuinely competitive open alternative win the open access licenses, strengthening the case for limitations on incumbent participation – at least with regard to the open access licenses – and the need to take action to facilitate the entry of new competitors.

Similarly, while bidders that have prospered in the current open auction structure passionately oppose anonymous bidding, they have provided little of substance to rebut the academic literature in support of anonymous bidding. Nor have they provided any substantive rebuttal to Dr. Rose's studies demonstrating that blocking and retaliatory bidding took place during the AWS auction. Finally, none of those opposing PISC's suggested procompetitive conditions have responded to PISC's First Amendment and public policy arguments.

The lack of substantive evidence has not stopped incumbents and other special interests

from submitting thousands of pages into the record repeating the same unsubstantiated claims in innumerable variations. PISC therefore submits this *Ex Parte Reply* to respond these arguments and clarify its proposals.

SUMMARY

Open access provides a highly successful business model that will attract bidders.

Opponents of open access have argued that an open access condition will deter participation in the auction, reduce auction revenues, and impose costly and complex requirements on licensees. The record here, and evidence from both U.S. and foreign markets, demonstrate the opposite. Significant demand exists for an open network that can provide spectrum wholesale, so that wireless innovators can provide customers with new services that the existing oligopoly refuses to provide. This demand renders open access spectrum valuable, and therefore attractive to bidders not wedded to the existing “network command and control” wireless business model. Even AT&T, an ardent opponent of any open access condition, has indicated in recent days that it would “take a look” at bidding on the proposed E Block even if the Commission required the E Block licensee to provide open access.² Statements that no one could possibly be interested in an open access license should therefore be regarded with healthy skepticism.

There are no substitutes available for open access to significant spectrum in this band.

The suggestions by some that the possible availability of the broadcast “white spaces,” OET Docket No. 04-186, obviates the need for open access here should be summarily rejected. In the first place, the outcome of that proceeding remains in doubt. The Commission’s *Further Notice* explicitly leaves open the question of whether it will offer that service as a licensed, unlicensed,

² Brendan McGarry, “AT&T Eyes Potential New Business Model In Spectrum Bid,” Telecom Watch (June 25, 2007) available at <http://www.publicintegrity.org/telecom/telecomwatch.aspx?eid=2973>.

or “hybrid” service, whether it will permit mobile devices in the band, and how many channels it will make available for use. *See Unlicensed Operation In the TV Broadcast Bands* 21 FCCRcd 12266 (2006). Even if the Commission resolved these issues favorably, the need for open access spectrum would remain for those providers and services that demand the certainty of licensed spectrum. *See In re Continental Airlines*, 21 FCCRcd 13201, 13214 (2006). Rather than adopting this “let them eat unlicensed cake” attitude, the Commission should view the synergies between licensed and unlicensed spectrum as an additional reason to set aside 30 MHz of spectrum for open access.

Spectrum caps and bidding credits enhance auction participation and auction revenue.

Incumbents offer the LMDS auction (Auction No. 17) as proof that incumbent exclusions invariably result in poor revenues and deployment failures. This ignores both the history of spectrum caps and new entrant credits in the PCS auctions, which resulted in substantially increased auction revenues and a robustly competitive market. Further, because the LMDS auction included two blocks – an open block and an “entrepreneur block” that excluded incumbents – the evidence from the LMDS auction actually demonstrates that incumbent exclusion made no practical difference to either auction revenue or successful deployment in the band.

Large license blocks can facilitate new entry without denying smaller carriers spectrum. Smaller carriers have expressed concern that a band plan that maximizes larger licenses will deprive them of opportunities and, given the uncertainty surrounding the entry of a sufficiently capitalized new entrant, provide an advantage to the largest incumbents. While such concerns are not without merit, the FCC can take steps to prevent the largest incumbents from

winning the REAG or EAG licenses. These include adoption of anonymous bidding, application of spectrum caps to the largest licenses, and designating the largest licenses as the “open access” licenses.

Anonymous bidding remains the sine qua non of a competitive auction. Despite significant opportunity to do so, no one opposing anonymous bidding has submitted any substantive arguments that would undermine the validity of the Rose studies previously submitted. Rather, those opposing anonymous bidding rely wholly on assertions without proof that blocking did not occur, that anonymous bidding disadvantages smaller bidders, and that open bidding is more “efficient.” PISC rebuts these arguments below.

ARGUMENT

I. OPEN ACCESS PROVIDES A PROFITABLE BUSINESS MODEL ATTRACTIVE TO POTENTIAL BIDDERS.

Opponents of open access maintain that open access has “failed” as a business model and would deter bidders from participating and diminishing the revenue from the auction. Even if consideration of impact on auction revenue were permitted, *see* 47 USC §§309(j)(7)(A)-(B), these unsubstantiated allegations with no supporting economic evidence would carry little weight.

While the existing providers may prefer to exercise control over their existing networks, that does not render a wholesale network unattractive to bidders. The attractiveness of a license at auction depends on whether demand for the service exists that would make bidding for the license profitable investment. As documented in this proceeding, enormous demand for an open wireless network exists. Wireless innovators filing in this proceeding have expressed their

interest in creating new wireless products, and how the current lack of open networks has stymied this innovation and economic expansion. *See* Letter of Wireless Founders Coalition for Innovation, filed June 7, 2007.³ Similarly, more than 250,000 individuals have expressed their frustration with the current wireless market and demand for an open network – clearly a sign of significant pent up market demand.

The existing MVNO market provides further “proof of concept” of the value of resale and the pent up demand for differentiated services open access facilitates. An example of a wholesale/ retail communications model that has been successful is the Mobile Virtual Network Operator (MVNO). An MVNO is a wireless service provider that, from a customer's perspective, is no different than a traditional wireless provider. But the MVNOs do not own any towers or control any spectrum; they buy it at wholesale prices from the "real," non-virtual carriers. From the consumer's perspective, MVNOs increase choice and competition in the marketplace. From a business perspective, the MVNO model allows new entrants to provide wireless services without having to obtain costly spectrum licenses or infrastructure, and enables the underlying carrier to reach customers it otherwise would not be able to.

The number of MVNOs is large and increasing. Some of the most notable examples are Virgin Mobile,⁴ Helio,⁵ and Qwest Wireless.⁶ These companies provide differentiation from their underlying carriers by offering unique services and integration. For instance, Virgin Mobile concentrates on the youth and prepaid markets, and Helio provides innovative services

³Available via ECFS at

http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=df&id_document=6519520321.

⁴Virgin Mobile Story, http://web.virginmobileusa.com/about/about_virginMobileStory (last visited Jun. 11, 2007).

⁵Helio Company FAQ, http://www.helio.com/page?p=about_faq (last visited Jun. 11, 2007).

⁶Why choose Qwest Wireless?, <http://www.qwest.com/residential/products/wireless/benefits.html> (last visited Jun. 11, 2007).

and handsets. Qwest Wireless is a full-service wireless provider that offers integration with Qwest's landline business. Still another business model, known as the "Mobile Virtual Network enabler," has arisen to provide back-end services such as billing to MVNOs. Visage Mobile is a prominent MVNO that "[m]anage[s] all the back-office systems and support, including carrier integration, prepaid, postpaid and data billing, and complete data operations...."⁷ The success of even this limited differentiation provides more than adequate "proof of concept" for the viability of a wholesale business model.

Bidders examining the attractiveness of such a model will discover that wholesale offers considerable profit. The MVNO business model has been successful for the carriers that provide wholesale communications services to the MVNOs. Sprint wholesales to companies such as Embarq, Virgin Mobile USA, Helio Inc., Qwest Communications International, Inc., The Walt Disney Company and Modiva Communications, Inc.⁸ MVNO sales are increasing for traditional carriers – for the quarter ending March 31, Sprint's wholesale and affiliate subscribers increased to 7.8 million, up from 6.6 million of the same quarter the previous year,⁹ and its wholesale and affiliate business increased by 29%.¹⁰ Other carriers, such as Verizon, have also gotten into the wholesale wireless market.¹¹

In the wireline world, Europe provides a stark contrast to claims that open networks are inherently unprofitable and therefore unattractive to potential bidders. Structural separation

⁷What's the Visage Platform?, <http://www.visagemobile.com/content/view/10/15/> (last visited Jun. 11, 2007).

⁸SEC filing of Sprint Nextel Corp., form 10-Q, period MAR 31 07. Date Filed: May 9, 2007. P. 28. (Citations are to the pages as numbered in the PDF download of the filing, available at investors.sprint.com, in the "SEC Filings" section.).

⁹*Id.* at 39.

¹⁰*Id.* at 38.

¹¹*See, e.g.*, Jason Ankeny, MobilePro closes MVNO deal with Verizon Wireless, *Telephony Online*, Apr 12, 2005, http://telephonyonline.com/wireless/news/mobilepro_mvno_verizon_041205/ (last visited Jun. 11, 2007).

continues to be embraced throughout the EU, bringing significant new investment and profit to the industry.¹² The argument of incumbents that open access constituted a “failure” in the United States is likewise refuted by contrasting the astounding growth of investment and revenue generated in Europe under open access with the far more modest growth in the United States since deregulation in 2005.¹³

Given the enormous profits to be had as a wholesale operator, it is irrational to suggest that open access spectrum will prove unattractive. It is true that members of an oligopoly – such as wireless operators – prefer monopoly-type practices that allow them to monetize all aspects of the network and prevent the emergence of competing services. But preventing the collection of monopoly-type rents does not render licenses unprofitable or undesirable to new entrants, even if existing incumbents choose not to bid.

In recent days, even ardent opponents of open access have allowed that – under the right circumstances – the open access model would prove profitable and attract their participation in the auction. In a recent interview, AT&T Senior Vice President Robert Quinn Jr. stated that if the Commission adopted the Frontline proposal with the open access condition intact, AT&T would “take a look at” whether or not it would find a wholesale model attractive.¹⁴ AT&T

¹²See Light Reading Europe, “Telcos Consider the Splits,” June 15, 2007, *available at* http://www.lightreading.com/document.asp?doc_id=126613 (Last viewed June 21, 2007).

¹³See Speech of Viviane Reding, Member of the European Commission responsible for Information Society and Media, Review of 2006 EU Telecom Rules: Strengthening Competition and Completing the Internal Market, June 27, 2006, *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/422&format=HTML&aged=0&language=EN&guiLanguage=en>.

¹⁴Brendan McGarry, “AT&T Eyes Potential New Business Model In Spectrum Bid,” Telecom Watch (June 25, 2007) *available at* <http://www.publicintegrity.org/telecom/telecomwatch.aspx?eid=2973>.

Spokesperson Michael Balmoris confirmed that “Our position is that we need to see the specific rules the FCC adopts for the auction before determining our level of participation.”¹⁵

In other words, one of the largest incumbents, a regular auction participant, and a staunch opponent of open access nevertheless believes that open access – under the right conditions – may provide a workable model profitable enough to interest it in bidding. In light of this, the Commission should treat arguments that open access is a “poison pill” that will limit the auction to Frontline or scare away bidders entirely as nothing more than posturing designed to secure rules that conform with the desired business models of the incumbents. Once the Commission adopts rules, even the most ardent opponent of open access will need to reassess its position. Based on the evidence of demand and the unwillingness to let such spectrum fall into the hands of rivals, it seems more than likely that a significant number of those equating open access with a “poison pill” will ultimately decide to bid on the open access licenses.

Even accepting the premise that open access licenses will attract less interest and lower bids, this does not mean that the auction *as a whole* will suffer reduced revenue. Under the logic advanced by opponents of open access, the increased scarcity of the supposedly more desirable “flexible” license should increase their value. Opponents of open access seeking to base their arguments on reduced auction revenue must therefore do more than assert that because open access does not fit the business model of incumbent bidders, these licenses will attract lower bids. They must also discuss the offset from the increased return on the remaining licenses.

But again, even if such an exercise showed an overall reduction in revenue for the auction, this alone could not justify a refusal to adopt open access license conditions. The

¹⁵*Id.*

Commission is charged by Congress with maximizing the public interest, not maximizing auction revenue. 47 USC §309(j)(7)(B). Even if opponents of open access did prove with economic rigor (as opposed to mere assertion) that open access conditions on 30 MHz of the spectrum would substantially reduce revenue from the auction, the public interest benefits of increased competition, increased innovation, and the advancement of the goals of the First Amendment and the Communications Act would outweigh these revenue concerns.

II. NO SUBSTITUTES EXIST FOR ACCESS TO THE 700 MHZ SPECTRUM.

Some have suggested that alternate forms of access, such as the Commission’s proposal to open the broadcast “white spaces” for unlicensed use, obviate the need for the Commission to create an open access regime here. Others argue that resale agreements such as MVNOs and other “market-based” approaches demonstrate that the Commission should not “interfere” with the existing “highly competitive” marketplace. These arguments derive from numerous false premises and misconceptions.

First, the Commission has not yet made a final determination on critical issues in its pending white spaces proceeding. The *Further Notice of Proposed Rulemaking* explicitly sought comment on whether to permit use on a licensed or unlicensed basis, and whether or not to permit mobile operations. *In re Unlicensed Operations In the TV Broadcast Bands*, 21 FCCRcd 12266 (2006). Additional questions – such as the number of frequencies that the Commission will make available, and the nature of the interference avoidance technologies required – that will determine the cost of access and the potential uses of the spectrum remain unresolved. Finally, the Commission is under no statutory obligation to complete the proceeding in

accordance with the voluntary timetable it adopted last fall. For these reasons alone, the idea that the white spaces somehow eliminate the need for open access in this band is untenable.

But the suggestion that opening white spaces for unlicensed use somehow obviates the need for an open access system suffers from a more fundamental error. While the white spaces potentially provide valuable spectrum for wireless ISPs and others, licensed spectrum and unlicensed spectrum serve very different purposes and support very different business models. As the Commission itself recently observed in rejecting Massport's effort to restrict Continental Airlines' use of Wi-Fi in Logan Airport:

Part 15 specifies power levels, frequency bands, and conditions under which devices may transmit RF signals without requiring a license. Part 15 devices do not receive interference protection from other Part 15 devices. Therefore, because Massport's airport Wi-Fi backbone is composed of Part 15 devices, Massport has no right to operate the airport Wi-Fi backbone free from interference from other Part 15 devices, including Continental's Wi-Fi device. Likewise, Continental has no right to operate its Wi-Fi device without interference from the airport Wi-Fi backbone. Moreover, this holds true for any other Part 15 device users in the airport. Although Logan airport may desire to use the airport Wi-Fi backbone for public safety communications at some future time, this fact has no bearing on our present inquiry. The type of traffic carried by the backbone does not change the application of Part 15 of our rules. Users who believe they must have interference-free communication should pursue the exclusive-use options under our licensed service models instead of relying on Part 15 devices.

In re Continental Airlines, 21 FCCRcd at 13214 (footnotes omitted).

Opening the white spaces and open access to licensed spectrum would therefore compliment each other to promote competition for wireless services and spur wireless deployment. Competitors would have access to both licensed and unlicensed spectrum in neighboring bands, enhancing the ability to deliver a mix of services and quality of service offerings to customers. Similarly, the power levels and network architectures permitted in the 700 MHz licensed bands vary considerably from those proposed in the white spaces proceeding.

The availability of synergies between licensed and unlicensed spectrum and the boost to competition, innovation and widespread access to both types of spectrum provides a further reason to *require* open access in this proceeding, not a reason to reject open access.

III. SPECTRUM CAPS AND BIDDING CREDITS ENHANCE AUCTION PARTICIPATION AND INCREASE AUCTION REVENUE.

PISC continues to support adoption of exclusion of incumbents, either directly or *via* spectrum caps, to facilitate entry of new competitors. Alternatively, the Commission has proposed using a new entrant credit to offset the advantages enjoyed by incumbents in the auction.

PISC particularly urges the Commission to consider the use of spectrum caps as a means of facilitating new entry, given the history of success of spectrum caps in maintaining a competitive wireless environment and in stimulating interest by new entrants and an increase in auction revenues overall. Under the PISC spectrum cap proposal, the Commission would prevent any entity with spectrum in PCS, AWS, 2.3 GHz, or 2.5 GHz band spectrum from holding 700 MHz spectrum licenses that overlap by more than 10% with the licensee's existing spectrum licenses. Alternatively, the Commission could adopt this rule as a one-time prohibition, on the understanding that review of future acquisitions under Section 310(d) would explicitly examine whether to maintain the prohibition.

With regard to a new entrant credit, PISC clarifies that "new entrant" should include any entity that does not operate a terrestrial broadband network, wireless broadband network, or PCS network, regardless of size. As demonstrated by the recent AWS auction, new entrants face significant challenges to winning licenses no matter what their size. DBS Wireless represented a

partnership between the two largest satellite television providers and deposited nearly \$1 billion as an upfront, yet still came away from the auction empty handed. Furthermore, even a well-funded new entrant that manages to capture licenses must face the daunting task of building an entirely new infrastructure in the face of experienced incumbents with significant wireless and/or wireline networks already in place. A new entrant credit available to any new entrant regardless of size, therefore, serves not merely to attract new bidders. Such a credit would also help ensure that a successful new entrant does not emerge so laden with debt that it cannot compete effectively against incumbents.

A. Adopting Spectrum Caps Does Not Conflict With Previous Commission Practice or Previous Finding In Other Contexts That the Wireless Market Is “Competitive.”

As an initial matter, a number of incumbents argue that under *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752 (6th Cir. 1995), the Commission cannot impose either an outright ban on incumbent participation or a spectrum cap to facilitate new entry. *Cincinnati Bell* did not, as incumbents appear to suggest, prevent prohibitions on incumbent entry based on concern that incumbents would capture the licenses and thwart competition. As the D.C. Circuit subsequently explained in *Melcher v. FCC*, 134 F.3d 1143, 1151 (D.C. Cir. 1998), the FCC may properly exclude incumbents to promote competition based on its expert judgment that doing so serves the public interest. Nor does the fact that the FCC reached different conclusions in previous auctions prevent the Commission from deciding that the specific auction at issue requires different rules. *Id.*, 134 F.3d at 1150. Given the uncertainty of predicting the future, the Commission necessarily acts in the absence of certain proof. *Id.* As long as the Commission determination is reasonable,

and past precedents are properly distinguished, the Commission has latitude to exclude incumbents or use other means to encourage new entrants.

Citing the Commission's recent finding that the CMRS market is competitive, *see Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCCRcd 10947 (2006) (*Eleventh CMRS Competition Report*), and the recent report on broadband adoption made pursuant to Section 706 of the Telecommunications Act of 1996, *see* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of June 30, 2005* (rel. Apr. 3, 2006), incumbent licensees argue that rules designed to foster new entry would be arbitrary. These arguments do not avail, however, because they do not address the issue relevant to the Commission's decision here. In the first place, regardless of whether the CMRS market is considered competitive for the purpose of the annual report mandated by Section 6002(b) of the 1993 OBRA, the relevant market under consideration is the broadband services market. The Commission's most recent report on broadband deployment indicated that 96% of residential and small business subscribers have only two choices of broadband provider (DSL and cable) or fewer. This hardly qualifies as a "vibrantly competitive market."

Nor does reference to the Section 706 report contradict the need to enhance broadband competition. A finding in the context of Section 706 that deployment is occurring in a "timely fashion" says nothing about the state of competition or whether additional steps designed to introduce new wireless broadband competitors would serve the public interest. Further, as the

Commission itself has recognized, the methodology employed by the Commission and its definition of “advanced telecommunications service” have come under significant criticism. *See In re Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VOIP) Subscriber Data*, Notice of Proposed Rulemaking, 22 FCCRcd 7760 (2007). The Commission may certainly conclude in this proceeding that the findings of the Section 706 Report with regard to both the timely nature of deployment and the competitive nature of the market – while adequate in the context dictated by Section 706 – do not adequately meet the demands of the public for new providers and new services.

Finally, even accepting the most recent CMRS Report and the Section 706 Report at face value, the record more than adequately supports the use of either exclusionary measures such as spectrum caps or inducements to new entrants such as bidding credits. As explained at length in the initial comments filed by PISC on May 23, 2007, the current market offers an extraordinarily narrow range of services and capabilities. The Commission is fully justified on the basis of the record before it to conclude that it will serve the public interest to maximize the number of new entrants empowered to provide wireless broadband services to the public.

B. Spectrum Caps and Bidding Credits Increase Both Competition and Auction Revenue.

Turning to the substance of the arguments, opponents of spectrum caps and new entrant credits maintain that excluding incumbents from bidding on certain licenses will stifle

competition and reduce auction revenue.¹⁶ History, however, refutes that claim. Previous auctions show that conditions attached to who may bid on and who may ultimately obtain spectrum licenses do not negatively affect the final price of the licenses. To the contrary, such eligibility conditions have fostered equally competitive bidding and **increased** auction revenue. The 1994 PCS Narrowband and Broadband auctions, which implemented strict rules that included overall spectrum caps, bidding credits for small businesses, and blocks of licenses set aside for exclusive bidding by small businesses, raised substantial revenue despite (and, in some instances, because of) these conditions.

The most stringent conditions, employed in the PCS Broadband Auctions, generated the most remarkable increase in revenue. One 30 MHz block (“C Block” or “entrepreneur block”) was reserved exclusively for bidding by small businesses; large firms were not allowed to bid. Additionally, no single entity was permitted to obtain more than 98 of the 986 available licenses and bidding credits were given to small businesses¹⁷ (10% credit) and very small businesses.¹⁸ (25% credit). As a result of these conditions, small businesses eager to enter the market submitted aggressive bids that produced net revenues more than twice the prices in the previous

¹⁶ See, e.g., Comments of Verizon Wireless, to the *Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Dkt. No. 06-150, 31—33 (May 23, 2007), available at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519415135, Comments of MetroPCS Commc’ns, Inc., to the *Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Dkt. No. 06-150, 39, 42—43 (May 24, 2007), available at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519415478, Comments of AT&T Inc., to the *Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Dkt. No. 06-150, 21—23 (May 23, 2007), available at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519415243.

¹⁷“A small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than \$40 million for the preceding three years. 47 C.F.R. §24.720(b)(1).

A and B Block auction.¹⁹ Then FCC Chairman Reed Hundt praised the auction structure for “provid[ing] an opportunity for businesses, and especially new entrants, to compete to serve consumers”²⁰ and commented that the auction overall “exceeded all expectations.”²¹ A Congressional Budget Office report reviewing the auction structure found that the higher C Block bids were a result of “more favorable rules designed to encourage designated entities to participate [and] greater competition for available licenses.”²²

Indeed, since elimination of spectrum caps on January 1, 2003,²³ *auction revenues have precipitously declined* on a MHz/POP basis. Auction 35 in 2000, the last significant auction before the repeal of the spectrum caps, yielded an average MHz/Pop of \$4. By contrast, the AWS auction yielded a MHz/Pop of only \$.53 MHz/Pop.²⁴ In other words, the “wildly successful” AWS auction yielded *one eighth* the value of the last spectrum auction with spectrum caps, despite the overall rise in demand for spectrum. More striking, the 1994 PCS auction, which combined both spectrum caps, incumbent exclusions, and new entrant credits *earned nearly three times the revenue of the AWS Auction* on a MHz/Pop basis.

¹⁸ “A very small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average annual gross revenues that are not more than \$15 million for the preceding three years.” 47 C.F.R. §24.720(b)(2).

¹⁹ Peter C. Cramton, *The FCC Spectrum Auctions: An Early Assessment*, University of Maryland, Journal of Economics and Management, 6:3: 432—495.

²⁰ Bill Pietrucha, *FCC Begins D/E/F Block Auctions*, Newsbytes News Network (August 28, 1996), available at http://findarticles.com/p/articles/mi_m0NEW/is_1996_August_28/ai_18626969.

²¹ *FCC Spectrum Top \$20 Billion*, Newsbytes News Network, (April 9, 1996), available at http://findarticles.com/p/articles/mi_m0NEW/is_1996_April_9/ai_18179764.

²² Congressional Budget Office, *Where Do We Go From Here? The FCC and the Future of Radio Spectrum Management* (April 1997) at 19, available at <http://www.cbo.gov/ftpdocs/0xx/doc9/fccauact.pdf>.

²³ *In re 2002 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Services*, 16 FCCRcd 22668 (2001).

²⁴ See “700 MHz: a Pivotal Auction,” Blair Levin, Rebecca Arbogast, and David Kaut, Stifel Nicolaus, March 2, 2007.

This result, while counter to the simplistic logic proposed by incumbents, follows logically from the extensive empirical research conducted by Dr. Gregory Rose and already submitted into this docket. Consolidation has reduced the available pool of bidders, retaliatory bidding has had significant demand reduction effects, and incumbents routinely use the open auction system to exclude new entrants. This, in turn, discourages potential new entrants from even attempting to bid, allowing the incumbents to acquire licenses, as SpectrumCo described after the AWS auction, “at attractive prices.”²⁵

Following the lessons of the PCS Broadband Auction, the exclusion of incumbents in the 700 MHz auction is likely to produce equally vibrant competition and generate significant revenue. In fact, history has shown that the exclusion of incumbents is the best guarantee that the market demand for small businesses and new entrants will be met.²⁶ To the extent that incumbents are unable to bid, other firms are more likely to participate, assured that they will not be in direct competition with deep-pocketed incumbents, will not have to fear becoming the target of anti-competitive strategies,²⁷ and, thus, will have a realistic chance of winning a portion of the spectrum.

Should the Commission choose to forego incumbent exclusion for the more conservative, albeit less certain, new entrant credit, history continues to refute the proposition that new entrant

²⁵“Cable Consortium Acquires Spectrum Licenses Covering National Footprint” Comcast Corporation Press Release, Oct. 5, 2006., available at: <http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=912578&highlight=> (last viewed May 22, 2007).

²⁶ See Gregory Rose and Mark Lloyd, *The Failure of FCC Spectrum Auctions*, Center for American Progress (May 2006) at 21, available at http://www.americanprogress.org/kf/spectrum_auctions_may06.pdf. (examining measures taken to enable the acquisition of spectrum by small businesses and businesses owned by minorities and women and concluding that the PCS Broadband C Block auction was the only auction where the measures taken were effective.).

²⁷ See generally Gregory Rose and Mark Lloyd, *The Failure of FCC Spectrum Auctions*, Center for American Progress (May 2006), available at http://www.americanprogress.org/kf/spectrum_auctions_may06.pdf.

or bidding credits necessarily result in decreased auction revenue. For example, in the Regional Narrowband PCS Auction, the FCC instituted a 40% bidding credit for designated entities (small businesses and businesses owned by minorities and/or women) applicable to ten licenses. Not only were all ten of those licenses won by designated entities, but competition for those licenses was so healthy that the credit was effectively eliminated. Prices paid were “40% higher on licenses receiving the credit than equivalent licenses without the credit,”²⁸ resulting in auction revenue essentially equal to that raised by the licenses that did not have bidding credits attached. Then Acting Wireless Telecommunications Bureau Chief Michele Farquhar applauded the auction structure for “providing incentives for small players, creating jobs for the American public, and introducing more competition in the wireless and video marketplace.”²⁹ Former FCC Chairman William Kennard noted in 1999:

Before the [1994 PCS] auctions most Americans had a choice between only two wireless providers, if they were lucky. Today, over three-fourths of Americans have access to at least five wireless providers . . . since 1994, prices have fallen by some 40%. And the number of wireless subscribers has tripled.³⁰

The results of the PCS Broadband and Narrowband Auctions clearly indicate a strong market demand for small businesses and new entrants to acquire spectrum. The volume and quality of participation by small businesses and the quantity of revenue generated (despite the so-called onerous conditions) are solid proof that attaching eligibility conditions to licenses is not incompatible with achieving a successful auction that generates substantial revenue. To the

²⁸ Peter C. Cramton, *The FCC Spectrum Auctions: An Early Assessment*, University of Maryland, *Journal of Economics and Management*, 6:3: 432—495.

²⁹ FCC Spectrum Top \$20 Billion, Newsbytes News Network, (April 9, 1996), *available at* http://findarticles.com/p/articles/mi_m0NEW/is_1996_April_9/ai_18179764.

³⁰ William E. Kennard, *Fostering Competition in a Converging World*, Before the Practicing Law Institute/Federal Communications Bar Association Policy and Regulations Conference (December 9, 1999), *available at* <http://www.fcc.gov/Speeches/Kennard/spwek943.html>.

contrary, the inclusion and encouragement of new entrants in the 700 MHz auction is essential to guarantee a competitive environment that is truly reflective of market demands.

C. The LMDS Auction Does Not Prove The Counter-Case.

Incumbents have sought to counter these statistics with the example of the Local Multipoint Distribution System (LMDS) auction (Auction 17). Auction 17 raised significantly less revenue than some had predicted, prompting incumbents here to argue that the reduced revenue resulted solely from the exclusion of incumbents. This ignores not merely the counter example of over five years of successful PCS auctions conducted with spectrum caps, but ignores the fact that incumbents *did* participate in the LMDS auction. An actual examination of the facts surrounding Auction 17 supports a conclusion that the exclusion of incumbents from one block of licenses made little difference in revenue, and that private parties that had dramatically overestimated revenue had failed to consider technical limitations inherent in the spectrum.

Auction 17, consisted of an “A Block” of 1,150 MHz of spectrum at 28 GHz and a “B Block” of 150 MHz of spectrum at 31 GHz.³¹ ILECs and cable operators were prohibited from bidding on licenses within the B Block with significant overlap with their coverage areas, but were permitted to bid on the A Block licenses within their home territory.³²

If barring incumbent participation and/or applying spectrum caps has any discernable effect on auction revenue it should become apparent from the significant difference in the dollar amount of the MHz-pop figure. That is, there should be a lower MHz-pop dollar amount where

³¹See <http://www.fcc.gov/Bureaus/Wireless/Factsheets/lmds.pdf>.

incumbents were barred from participation or where their spectrum ownership limits were capped (the B Block spectrum). Additionally, however, an analysis of the auction revenues must consider both the differences between the two blocks in the size of the spectrum licenses, the quality of the spectrum, and other relevant factors.

In Auction 17, the mean gross price/pop of the A Block licenses was \$1.34; the mean gross price/pop of the B Block licenses \$0.61. On the surface, this would appear to support incumbents' theory that exclusion of incumbents hurts revenue – despite the contradictory experience of the PCS auctions. A closer examination, however, demonstrates why this is not so. A limited number of licenses within the A Block attracted huge interest, while other licenses attracted little interest, creating a skewing effect that inflates interest in the auction over all. Interestingly, 114 of 493 licenses in the A Block failed to achieve bids at reserve price and were retained by the FCC, while only 8 of 493 in the B Block failed to meet reserve price, suggesting that incumbents bidding on the A Block were extremely sensitive in discriminating between prime and subprime spectrum within the block.

Despite the apparent disparity between the means, owing to large variance within the blocks, the difference between the means was only barely significant at the alpha level of .10. Given the consistent trends in the PCS auction supporting incumbent limits as increasing overall interest in the auction and therefore increasing overall revenue, even this modest difference is better explained by the differences in spectrum and bandwidth capacity between the “A Block” and the “B Block” rather than by the presence or absence of incumbents.

³²*Spectrum Auctions Are Not A Panacea: Theory And Evidence Of Anti-Competitive And Rent-Seeking Behavior In FCC Rulemakings And Auction Design*, Simon Wilkie, at 29 (2007).

Incumbents' attempt to use the LMDS auction as an object lesson on the alleged folly of excluding incumbents also fails, because it ignores the other factors more widely believed to have impacted overall interest in the band. Some private sector analysts had expected higher revenues from the LMDS auction, as a result of the PCS auction revenues and the general "irrational exuberance" surrounding the communications sector at the time. But these analysts ignore the underlying problems with the LMDS band. Fixed satellite services (FSS) and mobile satellite services (MSS) had also desired the band, and the FCC had previously issued licenses for these services.³³ Furthermore, this frequency range was already in use by several point-to-point microwave terrestrial systems.³⁴ To protect the growing use of these systems, the FCC divided the spectrum amongst geo- and non-geostationary FSS, MSS, and LMDS.³⁵

In addition to protecting incumbents, LMDS operators faced technical challenges caused by the high wavelength of LMDS and lack of effective technology available at the time of the auction. It was well known at the time that the equipment used with LMDS was not effective in rain or even high humidity.³⁶ As Timothy Salmon points out, "an analysis of the post auction results shows quite clearly that the prices and probability that a license sold were significantly negatively correlated with the level of rainfall in the license area."³⁷ Further evidence of the technological incapacities at the time of the first auction are reflected by the second auction of LMDS (of licenses that were originally not sold or defaulted on) a year later when many of the

³³*CRS Report for Congress: Radiofrequency Spectrum Management*, 97-218 SPR, Richard Nunno, at CRS-10 (1998).

³⁴*Id.*

³⁵*Id.*

³⁶*Spectrum Auctions By The United States Federal Communications Commission*, Timothy Salmon, at 14 (2002).

³⁷*Id.*

equipment and service problems had been resolved.³⁸ Simply put, the auction was held too soon and the predicted revenues overestimated as a result.

IV. LARGE LICENSE BLOCKS, PROPERLY CONDITIONED, CAN ENHANCE BROADBAND COMPETITION WITHOUT DEPRIVING RURAL PROVIDERS OF NEEDED SPECTRUM.

With regard to adopting a band plan, advocates for maximizing large licenses and for fracturing the spectrum into smaller licenses both raise valid arguments. Although some claims (such as the claim that rural licensees will not win licenses if the Commission Adopts Band Plan 3) do not withstand serious scrutiny, it nevertheless remains the case that selection of an appropriate band plan that promotes competition in broadband and wireless services is filled with risks and trade offs. On the one hand, critics of maximizing large license blocks correctly observe that – under the current auction rules -- the largest incumbents are in the best position to capture the REAGs to the detriment of Tier 2 providers. On the other hand, fracturing the spectrum maximizes the ability of incumbents to block new entrants. In addition, supporters of fracturing the spectrum significantly underestimate the difficulty licensees will face in reaching roaming agreements under the current market conditions.

As discussed in previous filings, increasing the number of licenses increases the ability of incumbents to block new entrants and signal one another. Large license blocks therefore facilitate the entry of new providers able to compete on a national or significant regional scale. Large license blocks also reduce the cost to new entrants who would otherwise expend considerable time and resources negotiating roaming agreements. Although advocates of fracturing the band into predominantly smaller licenses argue that major carriers ultimately

³⁸*Id.* at 14-15.

concluded such agreements, the competitive landscape has altered significantly since the 1990s when these negotiations took place. Existing incumbents already have national footprints as well as significant revenue streams. They have no incentive to negotiate affordable roaming with possible competitors. New competitors will emerge burdened with debt and facing the barrier of well established incumbents in a consolidated market – a condition that carriers in the 1990s did not face. Under these circumstances, rather than expecting the experience of the 1990s to repeat itself, it seems far more likely that incumbents will refuse to negotiate roaming agreements in the hopes of strangling new entrants and ultimately acquiring the licenses through consolidation.

PISC therefore continue to support Band Plan 3 and maximizing the number of larger licenses, but *only* if the Commission imposes proper safeguards to ensure that non-incumbents will have the opportunity to win larger licenses and that, even if incumbents do capture all the REAG licenses, the result will still further competition. The Commission can achieve this by imposing spectrum caps and other means of limiting incumbent participation on the REAGs, even if the Commission does not exclude incumbents from participation generally. Alternatively, requiring that the REAG blocks operate under an open access regime as proposed by PISC would ensure that, even if the incumbents capture these licenses, the spectrum will remain available to competitors.

A. Maximizing Large Licenses Does Not Threaten Rural Wireless Deployment.

The claim that substantial blocks of smaller-sized licenses must be set aside to avoid exclusion of rural telephone carriers who would otherwise be at the mercy of large incumbents lacks empirical merit. Examining all FCC spectrum auctions in which RLECs have participated, RLECs obtain the licenses upon which they bid approximately 62.8% of the time, frequently

with no opposition whatsoever. Major incumbent challenges of RLECs for licenses are relatively rare occurrences, observed primarily for licenses contiguous to larger metropolitan areas or licenses sought by RLECs in material relationships with major incumbents who are serving as proxies for those incumbents. Regressing a number of bidder-descriptive variables on the rate of successful PWB in these auctions, a bidder being an RLEC is the second strongest predictor of auction success (after amount of initial eligibility). This strongly suggests that endangerment of RLEC access to spectrum at auction is a myth because RLECs mainly bid on spectrum which major incumbents did not want.

Nevertheless, PISC recognizes the concerns of “Tier 2” carriers that reducing the total number of licenses available on a per market basis by maximizing the geographic license size may diminish the opportunities for Tier 2 carriers to break into new markets. Opponents of large license areas have also argued that it appears increasingly unlikely that a “white knight” bidder will emerge to challenge the existing incumbents. In that case, these carriers argue, the incumbents will acquire spectrum at the expense of Tier 2 competitors, placing these existing competitors in the CMRS market at a disadvantage.

As PISC observed in its initial comments, whatever action the Commission takes will represent a trade off among possible risks and outcomes. In taking steps to maximize the likelihood of new entrants, and to facilitate speedy deployment of new broadband services on a national basis following the auction, the Commission may make it more difficult for Tier 2 carriers to target specific markets in accordance with their desired business plan, or increase the cost to Tier 2 carriers to pursue their chosen business models. As the D.C. Circuit has observed, the Commission must often choose between “competing goals” when setting rules for spectrum

auctions. *Melcher*, 134 F.3d at 1162. The Tier 2 providers urge the Commission to select rules that maximize the likelihood of their own success on the grounds that doing so will promote competition. PISC respectfully suggests that the Commission would better serve the public interest by promoting competition in the national broadband market than by tweaking the edges of competition in the CMRS markets lucky enough to be targeted by Tier 2 carriers.

B. The Commission Must Be Wary of Concluding That New Entrants Will Not Bid.

With regard to the supposed failure of a “white knight” bidder to emerge, PISC notes that in the three months between the announcement of the AWS rules and the deadline for filing applications to participate in the auction, numerous entities made unexpected decisions to bid or invented themselves out of whole cloth. No one anticipated the formation of the DBS Wireless partnership, or its willingness to deposit nearly \$1 billion as an upfront for the auction. Nor did anyone predict with certainty that SpectrumCo would enter aggressively, or that past auction participants such as Mario Gabelli would seek to participate. The idea that a potential new entrant (other than DBS Wireless) would certainly have declared itself by now, despite the lack of certainty on critical aspects of the auction, runs contrary to the standard practice in the industry.

Indeed, even well-established incumbents with well-publicized interest in the spectrum have remained quiet about the extent of their expected participation until the FCC resolves this proceeding. For example, a spokesman for AT&T, rebutting speculation that it would actively bid on licenses with an “open access” condition, insisted that “we need to see the specific rules

the FCC adopts before determining our level of participation.”³⁹ Even before open access became an issue, AT&T refused to commit to any level of participation before seeing final rules.⁴⁰ Other bidders, from well established companies with significant past experience in FCC auctions to companies that have never participated in an FCC auction, are equally coy about the scope of their plans.⁴¹

The Commission should therefore hesitate to draw too much meaning from the supposed failure of an army of potential bidders to materialize to lobby the Commission on prospective rules. To the contrary, the history of FCC lobbying in advance of spectrum auctions makes clear that (a) parties financed by venture capital and other sources can emerge quickly if the FCC adopts rules that encourage new entrants; and, (b) even well financed, well established players hesitate to commit themselves before the FCC establishes service and auction rules.

C. The Commission Should Adopt Band Plan 3 With Appropriate Safeguards.

Nevertheless, in balancing the concerns expressed by the Tier 2 providers that maximizing large licenses makes it harder for them to participate with the desire to facilitate new entry, the Commission should consider application of conditions that directly address these concerns. For example, the Commission could place the open access obligations on the blocks

³⁹Jeffrey Silva, “700 MHz War: Frontline Challenges Verizon While AT&T Mulls Auction Plans,” June 29, 2007 (available at: <http://www.rcrnews.com/apps/pbcs.dll/article?AID=/20070629/FREE/70628013/1005/content>).

⁴⁰Howard Buskirk, “Verizon Wireless Seen As Leading Contender for 700 MHz Spectrum,” *Communications Daily* (March 30, 2007) (quoting Kris Rinne, senior vp- architecture & planning at AT&T as saying “We’re always looking at the 700 MHz auction but we haven’t made a final decision on whether we’ll participate in that or not”).

⁴¹See, e.g., “Cyren Call Eyes Alternatives in 700 MHz Proceeding,” *Telecommunications Reports* (June 1, 2007) (Cyren Call may consider bidding); Ian Martinez, “MetroPCS Eyes 700 MHz After IPO, Breakout 1Q,” *Communications Daily* (May 16, 2007) (noting that MetroPCS executives were “open” to bidding, but “avoided statements committing to it”); Howard Buskirk, “Verizon Wireless Seen As Leading Contender for 700 MHz Spectrum,” *Communications Daily* (March 30, 2007) (noting that SpectrumCo refused to comment on whether they would participate).

covering the largest geographic areas. This would have the salutary effects of making spectrum readily available throughout the license area for Tier 2 bidders and others worried about exclusion, while leaving the smaller licenses available for those Tier 2 providers and others that wish to control the licenses and integrate the license into existing closed network architectures. If the largest incumbents capture these licenses, it will not exclude other providers from offering service through the spectrum and thus negates the concern that large licenses – absent the emergence of a new competitor – will enhance the spectrum holdings of incumbents beyond the ability of others to compete.

Similarly, if the Commission determines that it will not adopt spectrum caps or new entrant credits generally, the Commission can choose to use them with large spectrum licenses. This directly addresses the concerns of large-license opponents while still permitting the Commission to facilitate new entry via license size.

V. THE FAILURE OF ANONYMOUS BIDDING OPPONENTS TO REFUTE THE ROSE STUDIES DEMONSTRATES THE NEED FOR ANONYMOUS BIDDING OUTWEIGHS ANY POSSIBLE ADVANTAGES OF OPEN BIDDING.

Notably, no one has disputed the use of retaliatory bidding and accompanying demand reduction. Instead, opponents of anonymous bidding have focused on the question of blocking. Even here, however, opponents of anonymous bidding offer nothing of substance. In response to the wealth of evidence submitted that incumbents engaged in both retaliatory and blocking bidding to exclude new entrants in the AWS-1 auction, SpectrumCo's and AT&T's sole assertion is that this is merely evidence that licenses in that auction were highly sought in a competitive environment. This assertion is belied by the recurring pattern of the majority of incumbents withdrawing from bidding on the relevant licenses within two rounds of the

withdrawal from Wireless DBS; this is plainly shown for the REAG F Block licenses in Table 11 of “How Incumbents Blocked New Entrants in the AWS-1 Auction: Lessons for the Future.” Such withdrawals would not have occurred if the licenses themselves were highly contested rather than merely objects to be denied to new entrants like Wireless DBS.

Similarly, the reasons offered in support of open bidding are either erroneous, irrelevant, or seek to transform the distorting effects of an open auction from defect to virtue. For example, Barat Wireless (which engaged in significant blocking behavior) writes that it justifies the value of the license not merely from seeing a high bid, but seeing that the bid comes from “well known and respected entities.” This, of course, flies in the face of the actual rationale for auctions – that auctions place spectrum in the hands of those that value them and who will therefore use them effectively. But even if one were inclined to disregard this assault on the underlying theory of auctions, the idea that Barat cannot gauge the true value of the license based on its own business strategy and experience but must rely upon the judgement of other “quality” bidders is absurd on its face.

Further, it is contradictory of another reason advanced by Barat and other smaller bidders, that they must carefully tailor their strategies to avoid direct confrontation with larger licensees. In other words, while smaller bidders rely on the endorsement of larger bidders to ascertain the value of a license – a function they cannot perform themselves – they then avoid bidding on these very licenses so as to escape the risk of retaliation which they claim does not occur.

Similarly, smaller bidders argue that anonymous bidding favors larger players with greater resources because it supposedly gives a premium on external research and maintenance

of “vast war rooms.” This ignores the fact that such vast war rooms and accompanying cottage industry in research for bidding already exist. Indeed, this resource disparity exists *because* of the open nature of the existing rules. Larger players able to afford detailed research and expensive bidding consultants count on the ability to target the unique weaknesses and needs of competing bidders, an ability anonymous bidding would deny. Unfazed by the inherent contradictions of their own arguments, opponents make the yet another unsupported and contradictory claim that smaller players benefit from open bidding because it allows smaller players to use information external to the auction to successfully outmaneuver larger bidders, *i.e.*, engage in the very research and engage the same consultants they claim they cannot afford.

It is obvious from this panoply of contradictory assertions – none supported by any economic evidence – that both large and small licensees that have benefited from open bidding offer no coherent reason for its retention other than pure self-interest. For those who have successfully gamed the system in the past, the opportunities for collusion, signaling and retaliatory bidding are features rather than defects of the FCC’s rules. Rather than permit these bidders to continue to manipulate the auction system under the guise of various claimed “benefits” of collusion, the Commission should adopt anonymous bidding.

CONCLUSION

As PISC has observed before, the 700 MHz auction represents a unique opportunity to transform the broadband and wireless communications landscape. Unsurprisingly, incumbents urge the Commission to avoid any significant changes and maintain the status quo. The evidence

in the record, however, points to a very different conclusion. Hopefully, the Commission will act in accordance with the evidence in the record rather than the repetitions of incumbents.

Respectfully submitted,

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